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Taxation

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TAXATION

EDITOR'S NOTE: The Taxation Report for this issue consists of two articles. The first, written by Mary Mercedes Marti, is entitled *Latin American Tax Law Review — Second Half, 1975*. The second, written by Richard S. Lehman, is entitled *Income Payments to Foreign Investors: The Hidden Tax Liability to the American Payor*.

LATIN AMERICAN TAX LAW REVIEW — SECOND HALF, 1975

MARY MERCEDES MARTI*

This study reviews the tax developments in eighteen countries of Latin America during the second half of 1975, with emphasis on those changes which affect North American investors and corporations. Pertinent legislation and rulings, as well as important judicial decisions are highlighted so as to give maximum coverage in each of the areas listed below.

Area No. 1 — Fiscal Policy

Area No. 2 — Promotion of Economic Development

Area No. 3 — Inflation Generated Measures

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The developments described in this article have been compiled with the assistance of Miss Roberta Pernice, Brooklyn College, New York.

Area No. 4 — Social Security Systems

Area No. 5 — Tax Administration

Area No. 6 — Special Situations

ARGENTINA

Under the Fiscal Policy Area, a ruling of the Income Tax Bureau has analyzed the legal nature of the contract for the leasing of containers by nonresident companies. Although the income is partly from an Argentine source, it is improper to determine the amount of net income by assimilating such leasing contracts to transportation contracts. Once the actual net income is assessed, the tax is to be applied at the 45% rate applicable to net income derived by nonresidents. After analyzing the features of these contracts, the Bureau concluded that actual net income is to be assessed in each individual case until the Bureau establishes by General Resolution the percentage of gross income that may be presumed as net income from Argentine sources. Such presumptions are already fixed by the statute for other international activities carried by nonresidents, such as transportation, communication, distribution of motion pictures and insurance. This presumption is due to the difficulty in ascertaining net income from Argentine sources.¹

Also included under Area No. 1, a provision of the Income Tax Law and regulations thereunder concerning enrichment of foreign treasuries by virtue of Argentine exemptions for income derived by nonresidents has been implemented by the Income Tax Bureau.

Withholding agents are to withhold the tax at either the 45% or 54% standard, as the case may be, if the recipient does not submit a certification from the home country authorities describing the tax treatment of the income items entitled to exemption in Argentina. If such certification is submitted, the withholding agent must retain only the amount that represents an actual transfer of revenue to foreign treasuries. These rules are temporary until final regulations are issued.² Collection of the excess profits tax levied on foreign investors who do not elect to be governed by the current Foreign Investment Law has been reregulated. Financial institutions selling foreign exchange to make remittances subject to the tax are required to withhold the tax and pay it to the Treasury. The Secretariat of State of Economic Programming and Coordination is the competent authority for determining the capital entitled to repatriations, which

is the basis for computing the tax. Payors of income to nonresidents, which is not subject to the excess profits tax imposed by an earlier article, must submit to the withholding agent a certificate to that effect issued by the aforementioned Secretariat.³

As an Inflation Generated Measure in Area No. 3, new rules apply to the determination of the tax base levied during 1975 on land fit for agriculture as an advance of the income tax. Under the statute, appraisal of land located in the Provinces of Jujuy, La Rioja,, San Juan, Mendoza and Santiago del Estero is to be determined by a formula based on unit market values set forth therein. Land located in all other provinces is to be taxed on the official appraisal adjusted by coefficients set forth in the new statute for each District into which the Provinces are subdivided.⁴

With regard to Social Security Systems, Area No. 4, Argentina approved a new Social Security Agreement with Uruguay on November 29, 1974. The Agreement provides, among other things, that benefits granted by each contracting country are not to be reduced by taxes on the ground that the recipient is not a resident of the grantor country.⁵

It is also noted that retirement pension benefits under the social security system have been overhauled, enabling workers under some limited programs to retire at an earlier age than previously allowed. The old system, consisting of retirement for years worked or for old age, has been replaced by four programs, namely, ordinary retirement, automatic retirement, reduced ordinary retirement, and premature retirement for female workers.⁶

Quite a few changes concerning tax refund claims have taken place in the Tax Administration Area. In a landmark decision, the Supreme Court of Justice extended the requirement of showing an economic burden for the tax refund claimed. The payor of interest on a foreign loan acquired to finance industrial equipment had paid with its own funds the withholding tax levied on the creditor's interest. The payor, as claimant, argued that the economic burden of a tax from which interest of such loans had been exempted from July 10, 1967, was a sufficient exemption. The Court held that since direct taxes may be passed on to consumers through the price structure of products in contemporary imperfect markets, the claimant had not proved that it carried the economic burden of the tax by merely showing that he actually paid the tax levied on the lender. Although the ruling sufficed to dispose of the case, the Court added, by

way of dicta, that the income tax regulations providing that the exemption did not apply to interest paid after July 10, 1967, on loans contracted prior to that date, were constitutional.⁷

Two months later, the Supreme Court of Justice denied tax refunds for lack of proof of economic burden in two new situations. In a claim for refund of a provincial tax on gross receipts from profitable activities, the Court held that, unlike individual taxpayers, commercial enterprises are presumed to transfer the taxes for which they are legally liable to the consumer. Where such transfer was impossible, as in the case of a wool exporter who had to sell the wool at fixed international prices on which a 1.5% contribution for the National Institute of Farm Technology was levied, the Court conceded the impossibility of such transfer. Nevertheless, it denied the claim on the ground that a collateral or regressive transfer of the economic burden of the contribution was possible and no proof to the contrary had been produced.⁸

In Area No. 6, Special Situations, significant rules have been issued by the Secretariat for Industrial Development with respect to the foreign exchange rate applicable for the remittance abroad of royalties under registered licensing contracts. The rate prevailing during the period covered by the royalty is to apply where payment in foreign currency is stipulated. If the contract is silent, it is presumed to contemplate payment in local currency, in which case the rate prevailing at the time of payment is to apply. Where the royalty is deemed to be a distribution of profits to the parent company, the rate to apply is that prevailing at the time that remittable profits are ascertained. The Secretariat prescribed that the guidelines for the approval of contracts to be registered in the future are that the royalty payments accrue in local currency and the exchange rate is that prevailing at the time of payment. The resolution points out that where the royalty is a percentage of the sales for a given period and there is a devaluation of local currency subsequent to the earning of the royalty and prior to the actual remittance, the local licensee has to bear the unfavorable rate change if the agreement calls for a royalty as a fixed sum in foreign currency or as a percentage of sales computed in foreign currency. Likewise, the licensee winds up paying more than the amount contracted for if the royalty is computed in local currency, but the rate applied is that in force during the period it was earned rather than that in force at time of payment.⁹ Congress has declared that the foreign investment law applies to loans payable in foreign currency. In case of a failure to register the loan according to such law,

the transaction will be payable in national currency, applying the exchange rates prevailing at the time the loan was made. Foreign capital invested or lent to Argentine persons is to be registered in the Foreign Investment Registry. The new law declares null and void the clause requiring payment in foreign currency, if, besides lack of registration, it is shown that the principal of the loan was delivered in national currency.¹⁰

BOLIVIA

Several changes have been introduced in the Fiscal Policy Area. Superseding temporary withholding rules passed during the taxable year 1974, a new Supreme Decree has prescribed the tax treatment of income of individuals, legal entities and nonresidents until the income tax laws enacted in October of 1973 are implemented by regulations. Earned income, interest and real property rentals derived by individuals or legal entities are to be taxed according to the laws in force as of December 31, 1973. Business profits of legal entities are taxed pursuant to the rules set forth by those laws, but at the 30% rate rather than 25%. Remittances to nonresidents are subject to the laws in force as of December 31, 1973.¹¹

Subsequently, the income tax system established in 1973 was then revised and implemented by a new decree-law, effective January 1, 1976. Among the areas covered by the regulations are the following: intercompany dividends, which are not taxed if they originate in profits already taxed; source of income in the case of imports and exports; accounting for inventories; depreciation rates; and deductibility of expenses incurred abroad.¹²

Also, the income tax system for individuals, established in 1973, has been revised and implemented by a new decree-law. The same statute amends the Tax Code. The system applies from and including the 1975 taxable year. Arts. 1-4. Pursuant to a former decree the Tax Law on Individuals' Income passed in October of 1973 was held in abeyance until regulations implementing it were passed.¹³

The royalty tax levied on minerals exported or sold to domestic refineries has been reduced and the minimum international price exempt from the tax has been raised. However, the percentages applied where the actual international prices exceed the top limit of the scale remain unchanged. The new rates are applicable as of January 1, 1976. Although the amended decree did not describe the royalty as a tax payable "in lieu

of income tax", the whereas clause of the amending statute states that the rate reduction is necessary due to the decline of international prices and the increase of the supplies and costs that burden the extractive industry.¹⁴

Rates ranging from 5% for transfers of property valued up to 20,000 pesos to children, parents and spouse, to 90% for transfers of property valued over 50,000 pesos to non-relatives, became effective in December, 1975, by virtue of a new decree-law amending the inheritance and gift tax law.¹⁵

Starting September 24, 1975, the tariff reductions set forth earlier that year have been suspended, except for trucks and commercial passenger vehicles. Tariff reductions for all motor vehicles had been passed by an earlier decree. Such reductions apply to vehicles already shipped if they were cleared in Bolivian customs on or before November 15, 1975, and, if not shipped but covered by bank letter of credit, if they were cleared on or before December 31, 1975.¹⁶

Certain workers are protected under the Social Security System in Area No. 4. Mining engineers and technicians will be insured against professional risks, disability, old age and death through a recently-created complementary fund. Contributions to the fund began on September 1, 1975, at the rate of 8% for the workers and 2.5% for the employers up to a 10,000-peso salary ceiling. Engineers, technicians and other professionals working for medium and small mining companies and for nationalized mining companies will start receiving benefits from the new fund on September 1, 1976. The fund will operate under the technical supervision of the Bolivian Social Security Institute.¹⁷

Also current protection of construction workers under the national social security system is being improved by changing the employer contribution from 15% of payroll to 2.5% of gross amount of all construction contracts. The amount of the contribution is to be withheld by the payor and will be revised annually. The new system took effect on May 1, 1975. Any person entering into a contract or subcontract is required to withhold 2.5% of the total contract value and to deposit the funds with the Social Security Fund within 48 hours thereafter for the account of the contractor. Construction workers are protected by the national social security system, pursuant to a decree whereby the social security system was overhauled. The new contribution covers the risks of professional illnesses and disability, medical expenses, old age and death.¹⁸

Manufacturing enterprises and those engaged in trade, the rendition of services or banking are required to reinvest at least 50% of their profits by increasing their capital. This obligation applies to profits derived during the fiscal years 1974 through 1980 inclusive. Enterprises which exceed the minimum reinvestment will be entitled to income tax rebates of up to 70%. The present requirement does not apply to small merchants, holding companies if their subsidiaries have made the reinvestment, oil companies, or foreign investments controlled by Decision 24 of the Cartagena Commission. Increases in capital arising as a consequence of the obligatory reinvestment are exempt from all national and municipal levies.¹⁹

BRAZIL

Quite a few changes have taken place in the Fiscal Policy Area. Most importantly, construing a provision of the Income Tax Law relating to income derived partly within and partly without Brazil, the Tax System Coordinator ruled that brokers acting within Brazil on behalf of foreign exporters derive all their income from Brazilian sources. On the other hand, income derived by Brazilian companies from their branches or subsidiaries located abroad is wholly from foreign sources, and, therefore, not subject to Brazilian tax jurisdiction.²⁰ On a related issue, the Taxpayers' Council held that legal entities may exclude from gross income profits in foreign currency or in bonds or shares issued abroad only if they are derived from payment of technical services, administrative assistance or the like, actually rendered abroad for other enterprises.²¹

Connected with this subject, important legislation on taxation of service income has been enacted. Income derived from services rendered in Brazil by domestic legal entities and sold abroad can be excluded in computing taxable income, to the extent of the foreign exchange received in payment. Income from technical or administrative assistance derived from Brazil by nonresidents is subject to 25% withholding tax irrespective of the place where the services are rendered or the manner of payment. Import duty exemption is provided for machinery connected with the rendition of services paid from abroad.²² Also, the authority granted to the Executive Branch to reduce the income tax levied on interest from foreign long-term loans was revised to include an alternative. The alternative consists of a grant to the borrower equivalent to a percentage of the tax withheld at the regular 25% rate. Pursuant to the new authority, the Central

Bank has repealed the tax reduction and instead has established a grant on behalf of the borrower, equivalent to 85% of the amount of the tax withheld.²³

In regard to import duties, from October 10, 1975, through December 31, 1976, ad valorem duties on imports listed in a new decree-law apply at increased rates. Products subject to duty in accordance with LAFTA country agreements or with the General Agreement for Tariffs and Trade (GATT) are excluded. Luxury items are subject to duties ranging from 170 to 205% ad valorem, resulting in a 100% increase over existing rates. Intermediary products have been increased by 30%. Duties on merchandise on board by October 10, 1975, will be levied as per the old tariff.²⁴

Also, the Ministry of the Treasury was authorized to impose countervailing duties of up to 100% ad valorem or to suspend duty exemptions on products originating from countries which restrict Brazilian exports. Where the products originate in countries entitled to duty concessions and the products are regarded as of interest for local consumption, the Treasury may reduce the duties applicable to similar products from countries not entitled to concessions.²⁵

Certain borrowers are entitled to claim a credit against the income tax payable by them in 1976 for the monetary correction in excess of 20% which they are required to pay to the lender for the 1975 fiscal year. The tax credit applies to long-term financing contracted for during 1975 for projects involving manufacturers of machine tools, steel, cellulose, chemicals, cement and fertilizers, and mining companies, and small and medium industrial or commercial enterprises.²⁶

Beginning with fiscal period 1976 (taxable year 1975), companies and their subsidiaries, owned in part by the government and in part by private parties will be fully taxed on operating profits. Certain holders of public concessions are not affected by the new statute. No tax is to be applied on distributed earnings attributable to the share owned by the government; nor should the withholding tax on dividends be applied to distributions attributable to such share. The tax rate is the general 30% rate applied to all legal entities. These taxpayers may exclude from taxable income the portion of profits attributable to activities for which the state has a monopoly under federal law.²⁷

Important changes in the taxation of foreign motion picture producers were introduced as of January 1, 1976. Under the amendments, the maxi-

imum expenses allowable are reduced from 60% to 40%, and the taxable portion of the rental has been increased from 70% to 90%. The amendments also authorize the Ministry of the Treasury to change such limits and to increase to 50% from the present 40%, the amount of withholding tax to be deposited in the Brazilian Film Enterprise. The Ministry set forth limits for such items a few days prior to the enactment of the amendments.²⁸

Congress has enacted legislation allowing legal entities a special deduction for expenses incurred by them in projects for professional qualification of individuals. The deduction may not exceed 10% of taxable profit and the project must be approved by the Ministry of Labor. Professional qualification is described as methodic training for any trade, advance studies or technical specialties at all levels. The beneficiaries of the education need not be employees of the taxpayer. The deduction is 200% of the actual expenditures and any excess over the 10% limitation may be carried over into the next three fiscal years.²⁹

It should also be noted that, exercising the authority granted it by law, the Executive Branch increased by 3% the rates of the single tax on lubricants, gas, and liquid fuels, effective September 19, 1975.³⁰ A month later, Legislation revising the single tax on lubricants and liquid and gas combustibles was enacted. New rates are to take effect January 1, 1976. Meanwhile, exercising the authority granted it by law, the Executive Branch has increased the rates by 40%, effective October 9, 1975.³¹

Also, several provisions of the law which overhauled the single tax on minerals have been amended. The changes relate to the taxable event and exemptions.³²

Additionally, the special tax system applicable to the income of holders of public service concessions of electric power has been extended through fiscal period 1979 (taxable year 1978). Under a former law, electric power companies were allowed to apply a 6% rate on their taxable income up to and including the fiscal period 1975 (taxable year 1974). This system has now been extended, as mentioned.³³

Under Promotion of Economic Development, Area No. 2, the tax credit of up to 1% of the income tax due for investments in new shares of the Brazilian Enterprise of Aeronautics, S.A. has been extended up to and including the fiscal period 1980 (taxable year 1979). Legal entities are now allowed to claim a credit against the income tax payable by them each year for the amounts invested in accordance with an earlier decree.³⁴

Furthermore, as in the past, exporters are allowed to exclude from gross income, profits derived from exporting industrialized products. The benefit, as enacted, will be valid through taxable year 1979.³⁵

As far as sports are concerned, as part of a program for the promotion of sports, several tax benefits have been established. Contributions to eligible sports associations may be deducted from taxable income. Equipment used by such associations enjoy exemption from both import duties and industrialized products tax. Individuals are allowed deductions up to limits to be established by regulations. Legal entities are allowed to deduct up to 5% of company operating profits computed without such deduction. Eligible associations, contributions to which are deductible, are those providing practice in at least three Olympic sports.³⁶

It bears noting that three decree-laws revising current rules on incentives to manufacturers have been issued. All manufacturers are granted a credit against the industrialized products tax, for local sales taxes, pursuant to the new rules. Manufacturers engaged in activities approved by the President of the Republic as being of relevant national interest, may be granted partial exemption from import duties on equipment used by them unless it originates in a country which restricts Brazilian imports. Manufacturers producing capital assets may receive a credit against the industrialized products tax, for up to 15% of the value of their domestic sales of capital assets containing value added in Brazil in the proportions to be fixed by the Treasury. The distillery industry is aided by the increase of 55% of the value of imported liquor for computing the industrialized products tax imposed thereon. The Executive Branch fixed at 50% the tax reduction mentioned above, which increases to 80% if the beneficiary is engaged in basic sectors of the economy.³⁷

Legislation revising the tax treatment of goods imported from Manaus Free Zone was passed. Import duties levied on such imports are reduced in proportion to the value added in Manaus. Exports to Manaus are not entitled to tax benefits for the promotion of industrialized exports, unless shipped to Manaus for specific exportation abroad.³⁸

An inflation generated measure is found in the adjustment of the income tax computation. The income tax payable by resident individuals from January 1, 1976 (taxable year 1975), is now computed according to a new table. The minimum taxable income exempt from the tax has been increased from 13,900 cruzeiros to 26,000 cruzeiros. Taxable income in excess of 500,000 cruzeiros (formerly 289,300 cruzeiros) will be subject

to a 50% tax. The progressive rate increases from 4% (formerly 3%) to 50%. Certain taxpayers may claim a standard deduction equivalent to 20% of their gross income, in addition to exemptions for dependents and medical expenses, and may file returns in short forms.³⁹

In another inflation-generated measure, exercising the authority granted it by the law, the Ministry of the Treasury has fixed at 1.30% the coefficient for updating cruzeiro values contained in the Income Tax Law. The coefficient applies from fiscal period 1976 (taxable year 1975). A table of the values expressed in cruzeiros in the Income Tax Law as consolidated in 1975, adjusted pursuant to such coefficient and rounded-off to the closest hundredths to cruzeiros, has been approved. The table identifies each provision in which values are expressed in cruzeiros, the amount stated in the statute as consolidated in 1975, and the updated amount. Some 70 provisions are listed.⁴⁰

Those workers affected by the Social Security Systems, Area No. 4, now include farmers. As of January 1, 1976, self-employed farmers and their dependents are protected by social security under new legislation. To finance the new program, all farmers must contribute each year 12% of the amount resulting from one tenth of the prior year output, plus one twentieth of the appraisal of the property not exploited. The new program is being administered by the Fund for Assistance to Rural Workers.⁴¹

From October 1, 1975, workers in the private sector are allowed to include services rendered as public employees in computing services for retirement pensions. A similar right has been granted to public employees. In order to be eligible for computing services rendered in the other sector, a public employee must have been employed by the government at least 5 years, and a private sector employee must have completed 60 monthly contributions to the National Social Welfare Institute. The accumulated services must add up to 35 years for male workers, 30 years for female workers and 25 years for veterans. No accumulation is allowed for concomitant services in the other sector.⁴²

Regarding Tax Administration, Area No. 5, exercising the authority granted it by the Federal Constitution, the Executive Branch enacted new rules for the collection and administration of the tax on income. The Rules consolidate legislation on the subject in force as of September 2, 1975. They became effective on September 3, 1975.⁴³

In the Special Situations Area, Congress has approved four treaties to avoid double taxation. The treaty entered with Germany, signed on June

27, 1975, in Bonn, applies to taxes on income and capital. A treaty signed with Australia on May 24, 1975, in Vienna, also deals with taxes on income and capital. The treaty with Sweden which was signed on April 25, 1975 in Brazilia applies to taxes on income.⁴⁴ A treaty signed on November 14, 1975, with Spain will enter into effect upon the issuance of a decree promulgating it.⁴⁵

CHILE

Among the many changes featured in Area No. 1, income tax payers may deduct from taxable income the amounts contributed to the recently-created National Unity Fund. The deduction applies in the year in which the contribution is actually paid either in cash or in kind. The Fund is to finance programs for the economic and social recovery of the country and its people.⁴⁶ A limit is set for the deduction allowed for contributions to the National Unity Fund as one of the amendments to certain provisions of the Income Tax Law which have been the subject of minor changes.⁴⁷

It is worthwhile to note that the 10% income tax surcharge imposed for the 1975 taxable year has been reduced to 5% and extended to include the period from January 1, 1976, to December 31, 1976.⁴⁸ The surcharge affects complementary and additional income taxes payable by individuals in 1977, the additional tax withheld on income paid or credited to nonresidents, and the additional tax payable by domestic corporations.⁴⁹

Exercising the authority granted it by the Income Tax Law, the Executive Branch increased the 40% tax rate on certain royalties and technical assistance fees derived by non-residents. For one year beginning January 1, 1976, a 60% rate applies to income items if connected with printing, clothing, furniture, cosmetics, liquor or wine industries.⁵⁰ It is pointed out that the President may raise the 40% "additional" income tax on royalties and fees paid or credited to nonresidents to 80%. The increase must be passed in November of each year, will apply as of January 1 of the subsequent year, and will be valid for one year.

In addition, the Chilean Internal Revenue Service has issued instructions for computing the taxable base of remittances abroad. Different rules apply, depending on whether the income from the contract is to be computed in national currency or in foreign currency, even though payment is to be made in foreign currency. According to the Service, addi-

tional withholding tax is due when the rate of exchange has changed between the time when the debt was entered on the books and the date of purchase of the foreign exchange for the remittance. The Income Tax Law provides that the withholding of taxes must be made within 15 days from either payment, credit, availability to the creditor, or entry of the expense in the account of the debtor. The tax to be withheld in the case of income remitted abroad is 40%.⁵¹

The exploitation of hydrocarbon deposits is now regulated. The National Oil Enterprise, a governmental agency, may contract the services of national or foreign persons for the exploration and exploitation of such deposits. The contractor receives a remuneration payable either in cash or in kind. Upon the termination of the contract, which may not be for more than 30 years, all assets used by a contractor revert to the Government. Contractors will pay either the regular income tax, or a tax on imputed income equivalent to 50% of the remuneration received. Nevertheless, the Executive Branch may reduce from 100% to 10% the income tax where the contract is too burdensome. Owners or shareholders of contractors will be exempt from income tax on their profits or dividends. The contract may provide for duty-free importation of equipment and supplies, which may not be sold for 10 years unless the duties waived are paid. Where the remuneration is payable in kind, the government may buy back the oil by making available free foreign exchange. No tax applies on the exportation of oil. Among the obligations of the contractor are the supplying of capital, equipment and know-how.⁵²

Payment of the import duty can be deferred for 7 years when the duty is levied on capital assets to be listed by decree, which are imported on or before December 31, 1977. The duty liability can be reduced by an amount determined on the basis of the FOB value of the goods produced with such capital assets and exported. The duty liability is to be expressed in dollars, but will be cancelled in national currency, without interest, at the exchange rate prevailing on the date of payment. The credit for exports is subject to several limitations and is to be determined pursuant to a complex formula. The duty actually paid is to be added thereafter to the cost of the assets and will be treated as additional invested foreign capital for purposes of the Foreign Investment Law.⁵³

Legislation amending several tax laws was also enacted. The taxes affected are the sales and service tax, the excise taxes on alcohol and cigarettes, the admissions tax and the stamp tax.⁵⁴

Also, taxes on sales by producers of benzine, kerosene, and diesel oil have been changed by decree, pursuant to the authority granted the Executive Branch by the law which created the levies.⁵⁵

The highlight of Area No. 2 is legislation favoring foreign investment and importation. Pursuant to amendments to the Sales Tax Law and to the Stamp Tax Law, transactions involving imported capital assets which are not produced locally in adequate quantity or similar quality will be exempt from sales or stamp taxes. The Rules on Foreign Investment and the Income Tax Law were also amended. Foreign investors entitled to reduced income tax on dividends from Chilean corporations may receive a tax credit in the amount of the reductions, applicable against the 40% surtax payable by the Chilean corporation. The Income Tax Law was revised to include among income exempt from the tax, fees for technical assistance rendered abroad in connection with projects approved by the Corporation for the Promotion of Production.⁵⁶

Also, under a new law which approves a program for social housing, donations to aid financing of the program are deductible in computing income tax. The housing tax, equivalent to 5% of profits derived by industrial and commercial enterprises, is to be paid as prescribed in the new law.⁵⁷ The changes took effect on July 7, 1975.⁵⁸

The bulk of the measures in the Promotion of Economic Development Area concerns tax regulations of specific activities. A new law regulating the automotive assembly industry has limited the business to three enterprises. These enterprises will receive customs duty reduction for their imports and will be protected by high duty on finished automobiles. The import duty applicable to certain parts has been reduced. The selected enterprises will pay 25% ad valorem duty on imported parts, except certain electric and transmission components, which are taxed 35% ad valorem. Optional parts are subject to the normal tariff. Finished automobiles are subject to a protective tariff progressively reduced from 115% in 1976 to 55% in 1983. Non-eligible existing enterprise must wind up the assembly business within one year.⁵⁹

In order to promote sports, a program of sweepstakes based on national sports events has been created. Profits derived by the new program and prizes paid to winners shall be exempt from income tax. The drawings shall be exempt from sales and service tax.⁶⁰

Tax exemptions granted to medium-size copper mining enterprises under contracts with the Government have been restored retroactively to

March 1, 1975. The new statute further provides that, if pursuant to such a contract, an enterprise is liable for an amount of tax higher than the amount payable under the general tax law, the tax is payable in accordance with such general law.⁶¹

Exporters of milk, wheat flour, produce, books, newspapers and magazines may receive tax rebates equivalent to 60% of the sales tax paid on goods and services purchased by them in connection with such exports. The tax refund is to be made by checks drawn upon the Treasury to the order of the exporter, within one month subsequent to the surrender of the proceeds from the exports.⁶²

Also, the law governing the free zones of Iquique and Punta Arenas was amended. Any merchandise may be brought in, processed and warehoused in the zones, except for those listed by the Executive Branch.⁶³ Among the goods excluded from free-entry to the zones are luxury goods, home appliances, vehicles, furniture and others listed by a Decree passed pursuant to such amendments.⁶⁴

In Area No. 3, exercising the authority granted it by the law which overhauled the real property tax, the Executive Branch has adjusted by 169.9%, appraisals and brackets of appraisals for exemptions of farmland and other rural property. The new values apply from July 2, 1975.⁶⁵ Thereafter, urban real property is to be re-appraised by December 15, 1976, and the new values shall apply from January 1, 1977. The real property tax levied on rural and urban properties shall be paid during 1976 on the basis of the appraisal in force as of January 1, 1975 updated by the coefficient resulting from the cost-of-living index increase for the period January 1, through December 31, 1975. According to the new statute, if the revenue originated by application of the new appraisals is higher than the current revenue from the property tax, the Executive Branch is required to reduce the income tax levied on imputed rental value and the stamp tax, commensurately with the aforementioned increase. The Executive Branch must update appraisals by July 1, 1976, in accordance with the cost-of-living index change for the period January 1, through June 30, 1976.⁶⁶

In the Tax Administration area, escudo values have been changed by the adoption of a new national currency.⁶⁷

Under amendments to the Tax Code, corporate reorganizations must satisfy several requirements so as to guarantee payment of the taxes due by the predecessor or acquired company. Every company selling its as-

sets and liabilities, merging with other companies, or reducing its capital must notify the Internal Revenue Service of such facts. No notification is required when the acquiring company promises to answer for the predecessor's tax debts.⁶⁸ Another amendment orders the change of the expression one thousand escudos to one peso, and five hundred escudos to fifty cents whenever they appear throughout the code.

The highlight of the Special Situations Area is a comprehensive regulation of foreign exchange transactions issued by the Central Bank. Among the areas covered are royalty and technical assistance contracts, repatriation of capital and remittance of profits. The various chapters include the bankers' market, the brokers' market, futures, travel allowances for residents, operation with foreign exchange by hotels, foreign transportation carriers, "invisible market" (repatriation of capital, fees, royalties, dividends, interest, loan installments, freight, insurance premiums, etc.), and rules on contracts payable in foreign exchange. The "visible market", also regulated, is composed of imports and exports which are transacted through the bankers' market.⁶⁹

COLOMBIA

In the Fiscal Policy Area, the Supreme Court stated that, in Colombian as well as in foreign economic science, "productive capital assets" are fixed assets used regularly in the manufacturing of physical products. Therefore, according to the opinion, the regulations properly implemented the income tax law.⁷⁰ However, the Council of State construed a provision of the old income tax law allowing a deduction for funds invested in productive capital assets. According to the Council, the phrase "productive capital assets" refers to any tangible or intangible business asset. Consequently, it was held that regulations defining the phrase as "fixed assets" are null and void.

Statutory provisions dealing with withholding of tax on nonresident partners' distributive share and on distributions made on account of such share by partnerships and limited liability companies were amended as of June 20, 1975. According to the new Decree, the tax so withheld must be paid to the Treasury no later than 15 days after the company's income tax return is filed each year, or within the first 15 days of the month following that in which a distribution was actually made on behalf of a nonresident partner or quotaholder.⁷¹

Regulations under the new inheritance and gift taxes became effective June 20, 1975. Special rules govern appraisal of assets, computation of the tax and probate proceedings.⁷²

Concerning the promotion of economic development, income and net worth tax benefits granted to authors and publishers of Colombian books were implemented by a new decree. The peso amounts representing exemptions from taxes were changed to their equivalent in units of constant purchasing power. New investment has been defined to exclude transfers of paid up shares and the reinvestment of profits. The amount of pesos represented by 3,299 units of constant purchasing power is allowed as an exemption from the net worth tax if it constitutes a new investment as defined in the Decree.⁷³

In Area No. 3, Congress enacted important amendments to the income tax system, intended to reduce the impact of inflation on the income tax burden. The Executive Branch is required to increase by 8% per year and cumulatively, beginning with the taxable year 1975, the amounts expressed in pesos in the income tax and complementary tax laws. Other benefits include a tax credit equivalent of 8% of the value of stocks held by certain shareholders, and an 8% discount from the income tax payable by corporations 51% owned by Colombian nationals; this discount is raised by 50% if a corporation is publicly held. Other changes eliminated the absenteeism surcharge for most Colombian taxpayers residing abroad and provide for prompt payments of refunds for tax withheld in excess at the source. Individuals can now take a 20% tax deduction on dividends of up to 60,000 pesos. Previously, the deduction was only available on dividends of up to 40,000 pesos. In addition, the 20% deduction applies to the 8% presumptive dividend. The maximum net worth that an individual may have in order to qualify for the discount has been upped from 2 million pesos to 2.5 million pesos.⁷⁴

Exercising proper authority, the Executive set forth the peso-values for the taxable years 1975, 1976, 1977 and 1978, which entered into effect on January 1, 1976.⁷⁵

COSTA RICA

The highlight of the Fiscal Policy Area is that Congress passed important legislation creating new taxes and expropriating foreign investors' land payable with tax-free agrarian bonds.

In addition to existing excise taxes, new taxes are now levied on the consumption of cigarettes, soft beverages, liquor and beer. The taxes are generally doubled if the product is imported, except for liquor imported from Central American countries or from Panama.

A stamp tax described as an "agrarian stamp" is to be paid upon recording transfers of property, forming companies, or increasing capital. The new agrarian stamp applies at the rate of one colon per each thousand colones or fraction thereof, of company capital. Undeveloped land owned by certain foreign companies was officially expropriated and will be compensated at the value declared for fiscal purposes in the five-year average preceding the date of the law. The compensation will be paid in 15-year colon bonds yielding 8% interest, or in 20-year dollar-bonds yielding 5% interest. The bonds and interest therefrom are exempt from all present and future taxes.⁷⁶

Several developments in Area No. 1 concern the consumption tax rates. Exercising the power vested in it by the Sales Tax Law, the Executive Branch has revised the rates of the selective consumption tax applicable to imported and locally assembled trucks, pick-ups and jeeps. The new rates entered into effect on July 1, 1975.⁷⁷ Also, exercising the power vested in it by the Sales Tax Law, the Executive Branch reduced the rates applicable to various products subject to the selective consumption tax. The changes entered into effect on November 4, 1975.⁷⁸ A month later, again exercising the power vested in it by the Sales Tax Law, the Executive Branch reduced the rates of the selective consumption tax applicable to refrigerators and certain beverages and revised again those applicable to imported and locally assembled trucks and pick-ups. The new rates entered into effect on December 3, 1975.⁷⁹

Specific goods were also affected by the consumption tax. Invoicing by importers and distributors of goods subject to the selective consumption tax will be strictly controlled. By using the profit margins allowed for retail sales the authorities shall be able to determine whether the foreign exporter's or manufacturer's prices upon which the tax is assessed have been underinvoiced. The Executive Branch is authorized to adjust the tax basis where the buyer and seller are affiliated or under-invoicing is presumed by application of fair market values. According to the new rules, where the profit margin of retail sales exceeds the 30% allowed under law, underinvoicing would be presumed.⁸⁰

The Executive Branch is authorized to exempt from the sales tax any product, at its discretion. Thus, it exempted raw materials used in

manufacturing insecticides and fertilizers, and cotton. The exemption took effect on August 28, 1975.⁸¹

On the other hand, a decree denying exemption from sales tax for products made with stone, sand and cement, if other ingredients are added, was revoked retroactively to June 21, 1975.⁸²

Congress also regulated the contracting of foreign performers. A 10% tax on the gross remuneration contracted for is to be withheld by the party contracting them. No withholding is made where the show is subject to taxes based on the gross revenue from admissions. In its stead, the contracting party must pay the Treasury 5% of the receipts.⁸³

Under Promotion of Economic Development, the Legislative Assembly approved the extension of the Second Protocol to the Central American Agreement on Tax Incentives to Industrial Development to December 31, 1977.⁸⁴

And in Area No. 4, enforcement of employers' obligations under the social security law was tightened, effective Dec. 3, 1975.⁸⁵

In the Special Situations Area, a bill proposing to regulate foreign investment was submitted to the Legislative Assembly. According to the bill, certain sectors of the economy will be reserved to the state and others, to nationals. All foreign investment, except loans to the state, would require the approval of a proposed Foreign Investment Commission. The flux of foreign exchange in and out of the country would be strictly controlled by the Central Bank. Among the grounds of the bill are the unfavorable balance of payments due to the "fabulous" profits drawn out of Latin America by earlier foreign investments, which are mainly North American. The solutions considered in the "whereas" clause of the bill are foreign exchange controls, increased taxation of direct foreign investments, renegotiation of interest on foreign loans, laws guaranteeing the right to nationalize property held by foreigners, and primarily, strict regulation of foreign investments.⁸⁶

DOMINICAN REPUBLIC

A number of new taxes are the major developments in the Fiscal Policy Area. Existing taxes on profits from sugar exports were replaced by a progressive tax applied in accordance to the FOB price and to the amount of sugar exported during the taxable year. Contracts for the sale

of sugar abroad must be negotiated through an auction subject to the supervision of the Dominican Sugar Institute.⁸⁷

Congress enacted a law creating a betterment tax on unimproved land located in urban areas and benefitted by public works. The new tax will be equivalent to 25% of the value increase attributable to such works. It will be administered by the Income Tax Bureau. For the purposes of the present law, an increase in value is understood as being the difference between the last appraisal of the property prior to the initiation of the works and the valuation made after completion of the public works project. Payment of the levy may be made in cash or by the transfer of a portion of the lands affected by the tax. The tax is payable by the owners of the realty, whether they are individuals or legal entities, nationals or foreigners, domiciled within or without the country.⁸⁸

Premiums charged for fire insurance and related lines have been subject to a new tax since March, 1975. The tax is 1.4% of the value of the premium.⁸⁹

Since January, 1975, motels and hotels for transients are subject to a new tax earmarked for municipalities. The rate depends upon the amount charged for the use of each room. Boarding houses and hotels which are regarded as belonging to the tourist industry are exempt from the new levy.⁹⁰

As for the Tax Administration Area, No. 5, transportation carriers and travel agencies selling tickets to travel abroad are required to comply with new rules on collection of the tax on foreign travel. The tax applies to tickets sold or given away, even if the ticket is not used or is returned.⁹¹

ECUADOR

Several changes have been introduced under the Fiscal Policy Area. A 60% import duty surcharge on the CIF value of certain imports arriving on or after August 25, 1975 has been created. Capital assets will be subject to a surcharge ranging from 0 to 25% of the CIF value, depending on the terms of payment. The 0 rate applies where payment is to be made in more than 360 days. The new surcharge does not apply to listed goods originating in Paraguay, or covered by import duty concessions to Andean countries.⁹²

Less than one month after its creation, the import duty surcharge has been overhauled retroactively. The 60% rate has been reduced to 30% and the surcharge levied on capital assets has been repealed.

The Central Bank must reimburse the amount of the surcharge collected pursuant to Arts 1-8, Decree No. 738 of August 25, 1975, and which exceeds the amounts due as computed under the new decree. Enterprises eligible for the import duty exemption under the promotion laws are exempt from the surcharge. Specific exemptions contained in Decree No. 738 have been eliminated. Instead, the Monetary Board has been vested with the powers to decide what imports are exempt from the surcharge where they are covered by special laws or outstanding agreements.⁹³

Also, pharmaceutical products for human use, which are not manufactured within the country, may be imported duty free.⁹⁴

In addition, under amendments to the "Added-value" Tax Law, medicines will be exempt, as well as the raw materials necessary to produce them, including their containers. The exemption of raw materials and containers is restricted to sellers which qualify under the Industrial Promotion Law.⁹⁵

In lieu of income and other taxes, export duties, profit sharing, and certain other contributions, oil companies shall pay a single tax equivalent to 71.42% of net income. The production royalty has been raised from 16.67% to 17%. The new tax system has been imposed retroactively to October 1, 1975.⁹⁶ Since July 9, 1975, oil companies have been subject to different income tax rates depending on the market served. If the market is the Pacific Coast of South America, the income is taxed at a 58.83% rate, which includes additional taxes; the basic income tax is 53%. Income from oil exported to any other market is taxed at a 53.058% rate, which includes additional taxes; the basic tax is 47.8%.⁹⁷ For purposes of calculating profit-sharing and net taxable income of workers, the government has raised the presumptive total cost of producing the oil exported from \$45 to \$.512 (U.S.) per barrel.

The new figures apply as of July 9, 1975.⁹⁸

Beginning July 14, 1975, the 15% tax on coffee exports has been applied in accordance to a scale based on the quality of the product and its international price. If the price for the best quality coffee is \$45 (U.S.) per hundredweight or less, no tax shall apply.⁹⁹

Regarding Area No 2, in order to encourage the formation of new companies, the establishment of foreign companies, and the capitalization of those currently in existence, no stamp tax or recording fees will be levied on company capital, or on transfers of stock. The exemption applies where companies are formed as well as where they are merged, consolidated or reorganized. This new benefit became effective on August 29, 1975.¹⁰⁰ The Law for the Promotion of Handicraft and Small Industry has been amended to include businesses whose fixed assets (excluding land and buildings) do not exceed five million sucres.¹⁰¹

Also, the development of industrial parks is encouraged by a new law granting tax benefits to enterprises establishing and operating such facilities. The general tax benefits consist of a stamp tax exemption for the formation or capital increase of the enterprise; exemption from transfer taxes affecting property acquired to establish the parks; and an import duty exemption for capital assets and their replacement parts.

Specific exemptions relate to income tax. A deduction for up to 75% of the initial investment is allowed. Investors may deduct 100% of capital invested in such enterprises, but not in excess of 50%, of their net income after paying the worker's profit share. For the purposes of the new law, developers of industrial parks are classified in either of two categories depending on their location. First category enterprises may deduct from taxable income up to 75% of their original investment, whether owned or borrowed. This percentage is only 35% for second category enterprises.¹⁰²

Pertaining to Area No. 5 on Tax Administration, the Income Tax Law has been amended with respect to the procedure for allowing reductions in tax deficiencies challenged by taxpayers.¹⁰³

It is important to note that there has been a revamping in the Foreign Investment Administration Area. A new authority has been designated under the Rules on Foreign Investment and Transfers of Technology. Effective September 11, 1975, the Ministry of Industries, Commerce and Integration was charged with authorizing new foreign investments, contracts for the transfer of technology, and the transformation of existing foreign companies into national or mixed companies. The Central Bank remains charged with the registration of foreign capital and the administration of foreign exchange in connection with repatriations and remittances. Under the new administration system, the Superintendency of Companies and the Superintendency of Banks are to con-

trol compliance with the fade-out provisions of the Rules by the enterprises under their respective jurisdictions.¹⁰⁴

A new Tax Code has been enacted. It contains important changes with respect to remedies and appeals, offenses, and other procedural and tax administration matters. Provision is made to the effect that the different claims and appeals available to taxpayers be filed without need for prior payment of taxes and surtaxes in dispute; however, tax administration may request that the Tax Court issue an order requiring that the taxpayer offer sufficient collateral to guarantee payment of the amounts in dispute. The tax offense is typified by serious tax violations. In ascertaining existence of the tax offense, measures are to be taken prior to the application of penalties to identify the intention of the transgressor.¹⁰⁵

The relaxation of restrictions on foreign investments is the highlight of Area No. 6. Exercising the power vested in it by decree, the Minister of Industries, Commerce and Integration allowed domestic banks, insurance companies, and financial companies to increase their capital from foreign sources, provided that the percentage of foreign equity is not increased. Capitalization of accumulated profits by branches of foreign banks has also been allowed.¹⁰⁶ Foreign capital may be invested in new financial companies if the equity acquired does not exceed 25% in companies formed within Quito or Guayaquil and 49% in companies formed elsewhere in the country.¹⁰⁷

Furthermore, companies constituted within Ecuador but which are regarded as foreign companies by reason of the holders of their equity may invest in new or established companies or make additional investments in accordance with new rules. Under the new rules, investment is permitted so long as the sector is not one of those reserved for nationals and authorization from the competent authority is obtained. No authorization is required where the resulting foreign-owned equity is 10% or less.¹⁰⁸

EL SALVADOR

The highlight of Area No. 1 is an important income tax reform. Under amendments to the Income Tax Law, individuals will be allowed additional exemptions for dependents. Legal entities will be required to attach to the income tax returns financial statements certified by a public accountant. Another amendment raises the interest rate for delayed

tax payments. The changes took effect on December 18, 1975, except for the certification of financial statements, which will be in force from June 20, 1976.¹⁰⁹

In addition, subject to reciprocity, El Salvador will grant to foreign shipping companies the same tax privileges allowed to national shipping companies. In the absence of such reciprocity, foreign shipping companies will be subject to taxes, duties and fees in the same amount in which Salvadorian companies are taxed by the respective foreign country. The amendment entered into effect on October 10, 1975.¹¹⁰

Substantial law changes have been made regarding the collection of the tax on matches, effective December 4, 1975. The stamp method has been replaced by a sworn return to be filed in the manner prescribed in the new law. The new system applies to domestic matches as well as to those imported.¹¹¹

In Area No. 2, it is important to note that the Congress of El Salvador enacted legislation granting tax benefits to cement producers on their extractive activities without prejudice to the benefits to which they are entitled on their manufacturing activities under the Central American Agreement on Tax Incentives for Industrial Development. The new benefits consist of duty-free importation of equipment, machinery, and supplies used in the extractive process. They will be granted only to corporations whose capital is owned by nationals by at least 50% and which meet the various conditions set forth in the statute. Among the conditions to be met are payment of a 0.02 Colon tax to the Treasury and a 0.01 Colon tax to the local Municipality per each 94.5 pounds of cement produced. The tax does not apply to sales to government agencies and municipalities, which have priority to buy 50% of the output at a price 25% below factory prices.¹¹² The Executive Branch has ratified the Second Protocol to the Central American Agreement on Tax Incentives to Industrial Development which Congress had previously approved. The protocol will enter into effect upon the deposit of the third Instrument of Ratification.¹¹³

GUATEMALA

In Area No. 1, it is important to note that the rates of the departure tax have been reduced from 5 to 3 quetzales for air travelers and from 1.5 to 1 quetzales for land travelers. Representatives of the country in international sports competitions are exempt from the tax.¹¹⁴

It also bears noting that a judicial stamp tax has been created in lieu of the stamp tax applicable to sheets of paper used in judicial proceedings. The new tax amounts to .11 quetzales per sheet supplied by the Court. This tax is to be collected by the Judiciary and its revenue earmarked for building of courthouses throughout the national territory. The judicial stamp will be sold only to lawyers who are active practitioners. The cost is to be borne by the parties to the litigation.¹¹⁵

Concerning exports, beginning December 3, 1975, the fixed duty levied on bananas has been raised progressively each year from 1975 to 1978. Producers will be allowed to import duty-free machinery and other supplies necessary for their farms, if not produced in Central America in sufficient quantity. The new rates per gross kilogram are .0184 quetzales for 1975, .0211 quetzales for 1976, .0237 quetzales for 1977 and .0263 quetzales for 1978 and subsequent years.¹¹⁶

Contributing to the Promotion of Economic Development, regulations implementing the credit for expenditures in afforestation became effective on October 3, 1975. Qualification of afforestation projects and the procedure for claiming the income tax credit are set forth in detail. Income taxpayers are entitled up to 50% credit against the income tax payable by them for expenditures in afforestation, within the conditions set forth by the regulations. The benefit is limited to resident individuals and legal entities who have possession of the land and afforestation projects approved by the National Forestry Institute.¹¹⁷

Regarding Area No. 5, from November 1, 1975, all employers located in areas covered by the Social Security System have been required to enroll in such system irrespective of the number of employees. The extension is intended to cover employers and employees in the interior of the country, which had not heretofore participated in the system if the number of employers was 5 or less.¹¹⁸

Area No. 6 centers around the ratification of the extension of a protocol. The Executive Branch has ratified the Second Protocol to the Central American Agreement on Tax Incentives to Industrial Development which Congress had approved.¹¹⁹ The protocol will enter into effect upon the deposit of the third Instrument of Ratification.¹²⁰

HONDURAS

Within Area No. 1, several provisions of the Income Tax Law have been amended as of December 8, 1975. Higher rates apply to certain

income items paid to nonresidents, such as rentals (10%), branch profits (15%), and dividends (15%). Old rates for these items were 5%. Dividends paid to resident individuals or legal entities are subject to 10% tax withheld at the source. Stiff penalties for tax evasion are imposed.¹²¹

In addition, changes in almost all existing taxes have been made. They entered into effect on December 8, 1975, except for those relating to sales taxes, which became effective on January 1, 1976. The taxes included a new excise tax on beer, excise taxes on liquor and on cigarettes, royalties on the exploitation of mineral deposits, export duty on certain minerals and on coffee, and the sales tax. Mining companies are now subject to a royalty computed on the gross amount of annual sales at a progressive rate ranging from 5% to 20%.¹²²

In the Tax Administration Area, it is important to note that regulations making operative the Taxpayers' Registry became effective on July 18, 1975. The tax identification card to be issued by the Registry must be produced in all presentations before governmental or judicial agencies and notary publics. The taxpayer identification number must appear in all business documents and papers issued in the pursuit of any business or liberal profession. Foreign companies carrying on any activity within Honduras must register within the 15 days following the date of issuance of the decree authorizing their operations.¹²³

Furthermore, the General Tax Bureau has been charged with the administration of all the taxes levied on mining activities under the Mining Code, except for export duties which shall remain under the jurisdiction of the Customs Bureau. According to the present Order, where the tax base is contingent on special facts such as total production, the Bureau is to estimate the amount of tax due in a provisional assessment prior to collecting it. Upon completion of the production cycle or taxable year, a final assessment is to be effected for collecting the total tax due. If the amount of tax is overestimated, the difference will either be refunded or credited against the same tax or the export duty which might be payable by the producer. The new system became effective on October 17, 1975.¹²⁴

MEXICO

As the highlight of the Fiscal Policy Area, numerous provisions of the Income Tax Law were amended, effective January 1, 1976. Among

those affecting domestic corporations were changes regarding cost of goods sold, amortization of certain expenditures, improvements by lessees, depreciation of leased assets, net operating losses, casualty losses, deductible and nondeductible items, payment of estimated tax, taxation of capital gains distributed by legal entities, and withholding of 20% of the value of occasional commercial transactions on account of the tax payable at the general progressive rate. Among the changes affecting nonresidents, the rate on interest derived by foreign banks has been raised from 10% to 21% and the rate on interest derived by foreign companies was a fixed 42% instead of the progressive rate. Dividends were taxed at 15% if paid to registered shareholders. Dividends on bearer shares and those owned by nonresidents, and net after-tax profits of branches of foreign companies were taxed at 21% as are rentals and commissions paid to nonresidents. The provisions on taxation of interest paid to foreign banks and suppliers apply to interest paid from January 1, 1976, although originating in contracts executed earlier. Interest from fixed-income bearer securities yielding an 8 to 9% annual return is taxed at 21%, from 16% under the old law. If the same security is registered, interest is taxed at 12%. Construction companies may elect to be taxed under the special system provided in the seventh transitional provision of the new law.¹²⁵

It also bears noting that effective August 29, 1975 the import and export duty tariffs which entered into effect on January 1, 1975 were amended. The highest import duties were raised from 75% to 100%. Numerous items were subject to revised duties. These changes do not affect imports from LAFTA countries which are covered by special agreements.¹²⁶

In addition, several items of the import tariff were revised, effective December 16, 1975. Among the items subject to lower duties or exempt are foodstuffs, chemicals, printed matter, industrial supplies, certain machinery and audio-video equipment.¹²⁷ The tax rates on beer, alcohol, wine and liquor, tobacco, and on gross receipts were revised as of January 1, 1976. Other amendments affect the Fiscal Code with respect to payment of taxes by personal check, determination of unreported income and coordination of tax authorities for enforcing federal fiscal laws. While the rates of the tax on beer and alcoholic beverages were raised by 30% and 20% respectively, the cigarette taxes were lowered. The definition of gross receipt as the taxable event of the gross receipts tax was revised to include transactions not performed in the ordinary course of the taxpayer's business.¹²⁸

Subject to various conditions, Mexican steamship lines was refunded up to 100% of federal taxes levied on their activities, through "Tax Credit Certificates." The amounts thus refunded were to be reinvested in improving the vessels. The certificates were non-transferable and were to be used to abate federal taxes not earmarked for specific purposes. The reinvestment project was to amount to at least the value of taxes to be refunded, and was to be submitted to the Secretary of the Treasury and Public Credit prior to applying for the refund.¹²⁹

In the Promotion of Economic Development Area, several changes occurred. An Executive Order revised an earlier one establishing import duty refunds for exporters of industrialized products. Indirect taxes levied by the Unions were refunded through "Tax Credit Certificates" in proportion to the cost of the product which originates within the country. The Order grants 50% off taxes if at least 40% of the cost originates locally; if such cost exceeds 60%, the refund increases to 100% of taxes paid by the exporter. A complex formula is used to compute the percentage of local cost absorbed by the exported products.¹³⁰

On December 15, 1975, the Law for the Promotion of New and Necessary Industries was repealed. Applications for the benefits of the law filed prior to December 15, 1975 were processed and granted on a case by case method, pursuant to the law repealed.¹³¹

Benefits similar to those granted to exporters of industrialized products were granted to producers of goods sold in border zones and free zones. The order took effect on August 29, 1975.¹³² The sale of airplanes by persons established in border zones and free zones was exempt from the gross receipts tax to the extent of the portion of the 30% rate attributable to the Federal Treasury. The exemption applied to sales made throughout 1975. The exemption was designed to enable sellers to compete with foreign companies established near the Mexican border.¹³³

As of August 22, 1975, producers of gold and silver enjoyed an additional 33% subsidy against the tax payable by them. Producers with financial difficulties were exempted from the tax. The subsidy lasted until December 31, 1975.¹³⁴

Companies, manufacturers associations, and technicians associations, which promote the exportation of Mexican industrialized products and Mexican know-how, were entitled to federal tax benefits under two Executive Orders. The benefits consisted in the refund of up to 100% of the indirect taxes levied by the Union upon their activities. Minimum

percentages of increase of exports over those of the preceding year as well as ownership requirements were to be met to qualify for the refund. "Tax credit certificates" were issued for the value of the taxes refunded. The "Tax Credit Certificates" were to be used to abate federal taxes, were not transferable and expire 5 years from the date of issuance. The amount represented by such certificates was to be reinvested. Both Orders set forth minimum capital and percentage of ownership of trading companies. They became effective on August 29, 1975.¹³⁵

In Area No. 4, coffee growers organized in "production and marketing economic units" by the Mexican Coffee Institute were insured against illness, maternity, disability, old age and death under the national social security system. The benefit is financed through an annual contribution of 720.72 pesos by the insured and an equal amount by the Federal Government. The decree describes the various benefits to which insured persons are entitled. The Mexican Coffee Institute is charged with all the duties imposed on employers for purposes of the social security system, such as registering workers and withholding every second month the worker's contribution.¹³⁶

Finally, in the Special Situations Area, Congress enacted a Mining Law which restricts foreign ownership to 40% for most enterprises and to 25% for special concessions. The law requires that concessions be worked, under penalty of forfeiture. However, industrial companies may be allowed to hold idle concessions if ore is being kept in reserve for future industrial needs.¹³⁷

NICARAGUA

In the Fiscal Policy Area, important changes were made in the Sales and Selective Consumption Tax Law, effective September 11, 1975. Some amendments relate to persons exempt from the sales tax. Other amended provisions designate the class of persons liable for the selective consumption taxes, which includes anyone who uses a taxed product as raw material. A third amendment revises certain rates of the selective consumption tax. Under the new law, exemptions granted to companies pursuant to the Central American Agreement on Tax Incentives for Industrial Developments do not apply to the sales and selective consumption taxes. Wheat flour, leather and shoes were excluded from the selective consumption tax. Certain rates of this tax were revised, such as underwear, which are subject to a 10% rather than a 20% tax, and liquors, which now pay 125% rather than 63%.¹³⁸

In the case of loans by non-residents, permanent advances by the home office, or financing by suppliers located abroad, the debtor is required to withhold the tax levied on the creditor's assets. The taxable year is the period running from July 1 of each year to June 30 of the following year. The tax is paid on the basis of a tax return to be filed between July 1 and September 30 of each year.¹³⁹

In addition, the real property tax has been implemented by regulations which took effect on July 28, 1975. Among other things, the regulations deal at length with the appraisal of real property and procedure for payment of the tax. Taxpayers whose property has not yet been appraised are required to file a "descriptive return" accompanied by the deed; the latter is to be returned to the taxpayer immediately.

A credit for outstanding mortgages shall apply for purchase-money mortgages, for financing provided by the National Financing System for Permanent Improvements, and for loans acquired for building the taxpayer's personal residence.¹⁴⁰

As to the special consumption tax on wheat flour, the Executive Branch declared the taxes operative as of September 11, 1975. They apply on imported and domestic wheat flour at the rate of 13% ad valorem.¹⁴¹

Under Tax Administration, the provisions of the Income Tax Law Regulations regarding payment of estimated tax by commercial and industrial establishments were amended as of September 22, 1975. Taxpayers now pay through the taxable year, 75% of the tax paid for the preceding taxable year. The balance, if any, is to be paid upon filing the income tax return. Special rules apply for the taxable years from 1974 through 1978.¹⁴²

PANAMA

Depreciation rates and requirements to be met by taxpayers claiming the deduction for reinvestments allowed by law have been set forth. The investment must start no later than June 30, 1976, and be completed on or before June 30, 1977. In the case of manufacturing or farming enterprises, the deduction of 25% of the amounts reinvested in fixed assets is allowed regardless of the source of the funds. In the case of enterprises engaged in the rendition of services, the deduction is allowed only if the funds reinvested originated in retained earnings.¹⁴³

In addition, a new law governs the exemption from income tax of interest from loans made to government agencies. Such interest and related commissions and other charges will be exempt from income and all other national taxes unless the loan agreement provides for payment, in part or in full, of any or all such taxes.¹⁴⁴

It is important to note that several changes have been introduced in the import duty tariff effective October 7, 1975. The items revised are bathroom fixtures and certain building materials. The highest duty applies to fixtures made of plastic material; the lowest to metal fixtures.¹⁴⁵

Moreover, as of January 1, 1976, numerous luxury items have been exempted from import duty. Among the products now exempt from import duty are perfumes, certain textiles, rugs, precious stones, jewelry, radio receivers, certain apparel, cameras, optical equipment, calculators, clocks, musical instruments, and sport goods.¹⁴⁶

Also, the excise tax on the first sale of soft beverages has been amended. Beginning September 1, 1975, the fixed rates per bottle have been changed to a percentage of the selling price. The tax is not deductible for income tax purposes.¹⁴⁷

Import duties on gasoline, diesel oil, and kerosene have been amended as of December 2, 1975. The gasoline consumption tax has been raised to .10 Balboa per gallon for both regular and premium gasoline as of that same date. Additional taxes on importation are not to apply to petroleum byproducts subject to import duties under the present law.¹⁴⁸

The tax on winnings from national lotteries and horse races has been revised again, effective September 16, 1975.¹⁴⁹

Two items are featured under Promotion of Economic Development. The Executive Branch has fixed by decree the contents of the tax credit certificates to be granted to exporters pursuant to a recent statute encouraging industrialized exports. Recipients of such certificates may draw tax credits against the total amount of the certificate by using coupons also described by the decree. They can be used to pay income, real property, gift, and import taxes owed by the recipient of the certificate.¹⁵⁰

Pursuant to another statute, buildings whose construction commences within sixteen months from January 1, 1976 shall be exempt from property tax for ten years. This exemption applies to unsold units built by December 15, 1975, provided that their sale is recorded no later than December 31, 1976.¹⁵¹

PARAGUAY

An important development occurred in Area No. 1. Exercising the power vested in it by the Income Tax Law, the Executive Branch has decreed that gains from the sale of real property are subject to ordinary income tax. The 5% tax paid on such gains at the time of the transfer is regarded as an advance of the income tax due in accordance with the tax return.¹⁵²

It also bears noting that with a view to encourage overland transportation enterprises, the Executive Branch has revised the current tariff by reducing duties levied on certain vehicles and chassis. Used vehicles are to be taxed as new, unless Customs evaluates their depreciation. The benefits of the tariff in force apply to duties, additional customs duties, and foreign exchange surcharges. Consular fees and stamp taxes relating to such imports are applicable in full.¹⁵³ Other duties stated in the tariff have been reduced for numerous items. The changes do not affect imports originating in LAFTA countries and contained in the National List of Paraguay. Among the products taxed at lower rates are food-stuffs, medicines, pigments, rubber products, moldings, paper, textiles, shoes, brakelining, tile, appliances, precious stones, tools, hardware, engines, machine tools, machines, copiers, electric components and cables, tractors, optical instruments and toys. The tariff has been revised with respect to the following items, among others: beef sub-products, cider, alcoholic beverages, petroleum by-products, paints, cosmetics, industrial supplies, clothes, containers, jewelry, stones, cutlery, appliances, farm equipment, machinery, electric equipment and writing instruments.¹⁵⁴

In the Promotion of Economic Development Area, producers of quebracho bark are now allowed to export their output and to import raw materials, equipment, replacement parts, containers and trucks free from customs duties, and foreign exchange surcharges. The exemption does not apply to liquid fuel nor to goods to be sold at the enterprises' stores. The eligibility of assets not mentioned by the present decree is to be determined on a case-by-case basis by the Ministry of Industry and Commerce.¹⁵⁵

Concerning Area No. 5, the Income Tax Council has authorized the Income Tax Bureau to receive from December 1, 1975, checks issued by corporations to the order of the Bureau in payment of income tax. The returned check shall serve as tax receipt. Where the bank which honors the check does not return the check to the depositor, the tax receipt shall

consist in the recording of the payment by the Income Tax Bureau on a third copy of the payor's tax financial statement, unless the check is defective or uncollectable. The Bureau has been authorized to extend to other taxpayers the system of payment by check.¹⁵⁶

Also, exemptions from customs duties, taxes and other levies, which are granted by agreements or laws, shall be authorized in each case by the Executive Branch, except for exemptions to diplomats and consular officers. According to the new law, persons entitled to import duty exemption must petition the Ministry of the Treasury for a decree authorizing the duty-free importations, or the sale of goods imported duty-free. The law, which approves the National budget for 1976, has charged the Internal Revenue Bureau with the collection of the tax on alcohol and the tax on industrial production.¹⁵⁷

One important Special Situation is that in Taipei, on September 25, 1975, an investment treaty was signed by representatives of Paraguay and the Republic of China. Investment in Paraguay can be made in cash, in assets or in patents and trademarks. Tax exemptions for "income derived from the investment" are granted within various limits depending upon the classification of the investment project as necessary to Paraguay's development or merely convenient to it. In addition to exemption from import duties and foreign exchange surcharges on imported capital assets and raw materials, projects regarded as necessary will qualify for 50% exemption from income tax on income derived from investments therein, and projects regarded as convenient will qualify for 30% exemption. It is not clear whether the exemption refers to the normal tax on enterprises' profit, or to dividends derived by the investors, or to both.¹⁵⁸

Another Special Situation relates to the exchange rate. A single exchange rate applies to purchases and sales of foreign exchange as of July 1, 1975. The single exchange rate applies to transactions between authorized banks and the public.¹⁵⁹

PERU

It is important to take note that the Income Tax Bureau has held that fees for engineering studies performed abroad are subject to tax in Peru on 60% of the gross amount paid, including reimbursed expenses. The Bureau also held that an international communications carrier was subject to tax on actual net income rather than only on 5% of gross

sales. The Tax Court disagreed on the ground that the Income Tax Law presumes that 5% of gross income is net income from Peruvian sources, irrespective of any evidence to the contrary.¹⁶⁰

Sugar exporters are no longer required to pay a tax on sugar exports as an advance of their income tax. Pursuant to new legislation, such exporters will pay estimated income tax according to the general rules contained in the Income Tax Law. Sugar exports have been subject to export duty at the rate of 3% of their FOB value, from November 1, 1975.¹⁶¹ In accordance therewith, income tax paid in advance upon exports of sugar during 1975 will be refunded, if paid in excess of the income tax due for such year, through nontransferrable tax credit certificates. These are redeemable at the maximum rate of 25% per year, but are to expire in 10 years irrespective of the amount of the unused balance. The certificates can be redeemed only in payment of national taxes, import and export duties, loans of the agrarian reform debt and loans taken from state banks for expansion of the enterprise beneficiary of the certificates.¹⁶²

The Peruvian Government has revised import duty concessions to Andean countries. Among the products affected are horses, cheeses, certain chemicals, cosmetics, cellulose, blueprints, electric bulbs, and coils.¹⁶³

Until December 31, 1980, income tax payers will be allowed to deduct donations made by them to professional sports associations in the manner prescribed by a new decree-law. No taxpayer may claim deductions for donations including that allowed by the present decree-law exceeding 15% of the taxable income. Taxpayers receiving income from industry and commerce may deduct as advertising expenses the amounts included in their advertising budget which are granted to professional sports association for promotion purposes. No limit applies in this case.¹⁶⁴

Pertaining to Promotion of Economic Development, certain reinvestments and capitalizations of profits made pursuant to the General Mining Law and related provisions are free from all taxes, including income tax. These and other tax exemptions granted to mining companies under complementary statutes shall be in effect for a 10-year period which began July 9, 1971. The present decree-law has been passed with reference to a provision of the Tax Code and a provision of the Income Tax Law, which require that any exemption from income tax be expressly authorized by law.¹⁶⁵

Under a new law, the exploration, exploitation and marketing of radioactive substances are now reserved to the State. Private enterprises, how-

ever, are allowed to obtain such substances as a by-product. Fixed assets used for that purpose may be depreciated at a 20% annual rate. Exported mining products will be inspected for radioactive substances. Should such substances appear in amounts feasible to be put to the country's benefit, the producer will be allowed to undertake production of them as a by-product, or may enter into a contract with the Peruvian Institute of Nuclear Energy for the Institute to obtain such substances.¹⁶⁶

Considering that tourism has not been covered by Decision 24 of the Cartagena Commission, Peru has regulated foreign investment in and transfers of technology to that sector. The National Tourist Bureau has been authorized to negotiate the amount of profits that an investor may remit abroad. No contracts for royalties based on gross sales will be authorized, unless the royalty is also based on net profits. The Bureau, in negotiating the percentage of profits entitled to be remitted is to consider the type of investment, location, reduction of technical costs, influx of foreign exchange, etc.¹⁶⁷

As an inflation-generated measure, the fixed monthly bonus equivalent to 400 soles which has been received by active employees from July 1, 1975 has been extended from that date to retired workers receiving pensions from their former employers or from the Peruvian Social Security System.¹⁶⁸

Within Area No. 4, beginning January 1, 1976, professional sportsmen are to be insured under the national social security pension system and are to receive seniority allowances and vacation pay. In order to finance the new benefits, professional sports associations must contribute two twelfths of the monthly salary of professional sportsmen to a newly-created fund. The fund will be administered by the Social Security Bureau.¹⁶⁹

As far as Tax Administration is concerned where the transfer of assets is executed by public deed before a notary public responsible for withholding taxes, the payment of any applicable tax is to be made by bank check to the order of the Bank of the Nation rather than either in cash or by check to the order of the notary public. The notary public is required to deposit the check in the Bank of the Nation no later than the second business day after the transaction's date.¹⁷⁰

Finally, in the Special Situations Area, on September 27, 1975, the foreign exchange rate in the markets for foreign exchange certificates and for remittances was consolidated. The single rate is 45 soles to the U.S. dollar in both markets.¹⁷¹

URUGUAY

Several revisions have been introduced in Area No. 1. Important income tax changes affecting nonresidents took effect on September 8, 1975. Dividends are no longer taxed, while net branch profits remain taxed as 20%. The 14% surtax is now eliminated, but the 20% tax rate on business profits, nonresidents's fees, and royalties has been raised to 25%, and the income tax is no longer deductible. Income derived by nonresidents having no permanent establishment is subject to both the 20% and the 25% rates (total 45% rate).¹⁷²

Besides the changes in the income tax law, almost every existing tax has been revised and the Tax Code has been revamped. The more significant changes include new rules for computing liabilities for the net worth tax, new rules on reinvestments for imputed income from farmland, new rates of the tax on rural leases, and on company capital, new system for applying the single tax on small merchants, new exemptions from added value tax, and also include the repealing of 80 levies and fees for services rendered by governmental agencies.¹⁷³

Exercising the power granted it by law, the Executive Branch repealed the stamp tax and raised the rates of the sales tax. Accordingly, the general rate increased from 18% to 20%, and the minimum rate elevated from 6% to 7%.¹⁷⁴

In lieu of several excise taxes, a new consumption tax on the first sale of certain products was created. The Executive Branch fixes the rate applicable for each product, but not to exceed 13% for wines, 1% for alcohols, 70% for liquors, 17% for beer, 10% to 20% for soft beverages, 20% for cosmetics, and 58% for cigars, cigarettes and tobacco. The tax base is the actual selling price or the values which the Executive Branch may fix for each product. It is payable by manufacturers and importers. No tax applies to exports. The Executive Branch determined that the date on which the new tax is to become effective may be no later than January 1, 1976. As of that date the excise taxes on wines, alcohols, liquors, beer, soft beverages and cosmetics were revoked.¹⁷⁵

In relation to this, the Executive Branch fixed the tax rates at the highest authorized levels and determined that the effective date of the new levels was January 1, 1976. The tax is applied on presumptive sale prices and is assessed and paid on a monthly basis. The presumptive sale price of imported liquor is 200% of that fixed for domestic liquor.¹⁷⁶

With a few exceptions, such as capital assets and tractor kits, all imports are subject to a 7% surcharge. Where goods are already subject to a surcharge, the new surcharge is to be applied cumulatively. The present surcharge does not apply to goods whose importation has been exempted from surcharges by law. However, exemptions granted by special regulations are not operative for purposes of the new surcharge.¹⁷⁷

Luxury imports are taxed in accordance with regulations issued under Chapter X of the Tax Law. The regulations contain a list of the products and raw materials to be regarded as luxury items; the list is based on the import duty tariff system. The levy is assessed by Tax Bureau agents, at a 16% rate applied on 150% of the cost of products, and at a 9% rate applied on 200% of the cost of raw materials. For purposes of the luxury tax (mainly on jewelry and precious stones), the "cost" is defined as the CIF Montevideo value, increased by customs duties and additional fees paid on such imports, excluding import duty surcharges.¹⁷⁸

The highlight of the promotion of Economic Development Area is the tax exemption for industries. Income tax exemptions granted to new industries of interest to the nation under the old tax on commercial and industrial activities remain in force despite the elimination of a similar benefit under the new tax on commercial and industrial activities. The new decree was passed in view of the fact that some advisory offices of the Ministry of Economy and Finances have ruled that all exemptions terminated as of January 1, 1974, while others ruled that outstanding exemptions were not affected by the new tax system.¹⁷⁹

Uruguay approved a Social Security Agreement signed with Paraguay. The agreement provides that workers from each country shall have the same benefits granted to nationals even if residing in their home country after retirement. It also provides for accumulation of seniority earned in either signatory country, provided that some of the services are rendered after the treaty becomes effective upon exchange of Ratification Instruments in Montevideo, Uruguay.¹⁸⁰

Important changes have been made in the administration of social security contributions in the construction industry. The Central Council for Family Allowances now collects the consolidated employer-employee contribution for all current benefits payable by the owner of the building under construction.¹⁸¹

The new social security system covering construction workers entered into effect on December 11, 1975, pursuant to regulations issued on that date. The consolidated employer-employee contribution is fixed at 83% of the amounts paid to workers. The regulations provide a list of activities regarded as construction, repair, remodeling, and demolition, all of which are treated as "construction industry." Shop sub-contractors, manufacturers of building materials, and extractive industries are excluded. The regulations also provide that the system applies only to persons physically working at the site. It does not apply to owners, partners or directors of contractor companies, nor to technicians and administrative personnel of such companies.¹⁸²

With respect to tax administration, the discount for timely payment of taxes was eliminated as of January 1, 1976, while fines for late payment were increased. Tax returns and accompanying financial statements must be signed by accountants. Small corporations may be reorganized tax-free through December 31, 1976.¹⁸³

The new single tax clearance certificate system entered into effect on January 1, 1976. The requirement of the new certificate for obtaining or renewing passports, for distributing profits of companies other than corporations or limited liability companies, and for selling motor vehicles has been suspended.¹⁸⁴

VENEZUELA

Changes on income tax and customs duties exemptions are the most significant developments on Fiscal Policy. The tax exemption for profits from farming, fishing, and forestry, for interest from loans, and for investments relating thereto, was revised as of October 7, 1975. Interest is tax-free if it does not exceed 8%, where the lender is a domestic institution, duration of the loan meets the statutory limits, and the proceeds are applied in machinery listed by ministerial resolution. Also under the new rules, investors in shares of new enterprises enjoy exemption from income tax on 20% of the funds applied to the purchase of such shares, provided that the new funds are used in acquiring fixed assets.¹⁸⁵

The tax exemption for interest from loans made by domestic institutions to farmers was expanded to include loans used to purchase livestock abroad.¹⁸⁶

The Executive Branch decreed that interest from loans for financing the purchase of trucks and certain passenger vehicles is exempt from income tax. The exemption applies only if the interest and commissions do not exceed 8% per year. In computing the 8% limitation, commissions and charges for services connected with the credit transaction are to be included even if charged by an individual or entity independent from the lender.¹⁸⁷

Importers and exporters enjoying duty exemptions are now required to ship at least 50% of the goods covered by the exemption on Venezuelan airlines, if the shipment is to be sent by air. The resolution provides that in the event of very special circumstances preventing the shipment by national airlines, the importer or exporter must so state in his application for duty exemption. The exemption will be granted or denied at the discretion of the Ministry.¹⁸⁸

The import duty tariff passed in 1974, and the national list of Venezuela issued for imports from Andean Pact countries were revised. Broad powers for exempting from import duty products originating in Andean Pact countries have been vested in the Ministry of the Treasury.¹⁸⁹ The new rules apply to the withholding of income tax levied on residents or nonresidents receiving royalty income. The payor of the royalty, upon paying it or crediting it to the account of the payee must withhold on 100% thereof the tax at progressive rates. If, prior to payment or credit, the recipient establishes a guarantee for an amount equivalent to the tax estimated to be payable for the current fiscal year, the withholding is waived. In computing the tax base for each payment or credit, prior payments or credits made in the taxable year are to be added, and the tax paid thereon is to be credited against the tax resulting from applying the progressive rates to the aggregate amount of royalties. The guarantee referred to in the new decree must be submitted through a bank or insurance company.¹⁹⁰

Several activities come within the Promotion of Economic Development Area. By virtue of a recent amendment to export regulations, exporters of farm or livestock products may be granted an additional tax credit equivalent to up to 50% of the regular tax credit given to all exporters. The exportations eligible for the additional credit may not exceed 25% of the domestic consumption of such product.¹⁹¹

Beginning January 1, 1976, domestic companies engaged in international air transportation are entitled to the tax credit certificates granted to exporters. Only tickets and freight services sold abroad are included in

computing the value added in Venezuela in the manner prescribed by regulations under the Law for the Promotion of Exports. Airlines are required to furnish all information in their books to ascertain the value added domestically to the services sold abroad, but are not required to produce a certificate showing the foreign exchange proceeds brought into the country.¹⁹²

The Executive Branch, pursuant to the Income Tax and Securities Market laws, granted income tax exemptions for 15 years to "open capital" corporations and their investors, and to interest from bonds offered to the public by certain corporations. Corporate tax may be reduced from 50% to 25% depending on the percentage of equity held by the public. Investors can enjoy total exemption for interest and dividends and for capital gains obtained upon selling them. In order to benefit from the exemption on the capital gains, sellers must reinvest the proceeds in other securities issued by "open capital" companies. Dividends from mutual fund shares are exempt if the fund deals exclusively with exempt securities. The exemption for interest of bonds publicly offered by companies which do not constitute "open capital companies" applies only to companies engaged in manufacturing, farming, cattle-raising, forestry, and fishing.¹⁹³

Implementing the Securities Market Law and income tax exemptions for "open capital" corporations and their shareholders, the Executive Branch issued a decree making operative the statutory definition of such corporations.¹⁹⁴

Under the Tax Administration Area, the Ministry of Mines and Hydrocarbons was appointed as the competent authority to administer foreign investment and transfers of technology in connection with oil-related activities. Its powers are described in a new decree, supplemented by the general rules on foreign investments.¹⁹⁵

Within the Special Situations Area, divestment of ownership in local companies by foreigners is now regulated. Foreign-owned companies engaged in activities reserved to domestically-owned companies must sell their holdings to nationals, and those companies not required to divest but which have chosen to do so must comply with the requirements set forth in the new regulations. The transfer must be approved by the Superintendency of Foreign Investment, even if the transfer took place before the enactment of the new law. Where a transfer has been made to a national, individual, or entity and the purchasing power of the transferee, or the

origin of the funds is not verified to the satisfaction of the Superintendency, the transfer will be regarded as made to a foreign person.¹⁹⁶

To close this tax law update for 1975, an important event is noted—the termination of oil concessions. All oil concessions are terminated, effective December 31, 1975. Government-owned companies thus operate expropriated concessions. These companies must pay income tax and fees but not local taxes. Compensation for the undepreciated book value of the assets, irrespective of any revaluation made before by the concessionaire, must be paid in 10 years or by government bonds. Concessionaires must pay the income tax for 1975 in cash. No deduction is allowed for the net value of the assets transferred to the government nor for the unamortized cost of the concession. Special rules apply to the guarantee fund established by the regulations under the law which imposed the reversion of oil company assets to the State. Concessionaires are required to deposit in the Central Bank of Venezuela the sums necessary to pay the maximum severance indemnities to which their workers would be entitled as of December 31, 1975. The notes will yield interest not in excess of 6%. The Central Bank has custody of the monies deposited on behalf of each worker. Workers have vested rights on such deposits and may use them as guarantee for the cost of housing, education or medical services. All outstanding pensions and pension plans remain in effect after nationalization.¹⁹⁷

NOTES

¹Revenue Ruling No. 48 (1974).

²General Resolution No. 1728 (1975).

³General Resolution No. 1699 (1975).

⁴Decree No. 3725 (1975).

⁵Law No. 21028 (1975).

⁶Law No. 21118 (1975).

⁷Decision of February 20, 1975.

⁸Decisions of February 28, 1974 and May 19, 1975.

⁹Resolution No. 1117 (1975).

¹⁰Law No. 21037 (1975).

¹¹Supreme Decree No. 12057 (1974) as extended by Supreme Decree No. 12578 (1975).

¹²Decree-Law No. 12853 (1975).

¹³Decree-Law No. 12852 (1975).

- ¹⁴Supreme Decree No. 12879 (1975).
- ¹⁵Decree-Law No. 12896 (1975).
- ¹⁶Supreme Decree No. 12880 (1975).
- ¹⁷Supreme Decree No. 12801 (1975).
- ¹⁸Supreme Decree No. 12540 (1975).
- ¹⁹Supreme Decree No. 12047 (1974) as amended by Supreme Decree No. 12405 (1975).
- ²⁰Rulings No. 61 and No. 62 of May 30, 1975.
- ²¹Decision of April 9, 1975.
- ²²Decree-Law No. 1418 (1975).
- ²³Decree-Law No. 1411 (1975) and Resolutions No. 334 and 335, both of Aug. 5, 1975.
- ²⁴Decree-Law No. 1421 (1975).
- ²⁵Decree No. 76084 (1975).
- ²⁶Decree-Law No. 1410 (1975).
- ²⁷Law No. 6264 (1975).
- ²⁸Decree-Law No. 1429 (1975). *Portaria* No. 529 (1975).
- ²⁹Law No. 6297 (1975).
- ³⁰Decree No. 76290 (1975).
- ³¹Decree-Law No. 1420 and Decree 76405 (1975).
- ³²Decree-Law No. 1412 (1975).
- ³³Decree-Law No. 1433 (1975).
- ³⁴Decree-Law No. 1408 (1975).
- ³⁵Decree-Law No. 1423 (1975).
- ³⁶Law No. 6251 (1975).
- ³⁷Decree-Laws No. 1426 and 1428 (1975). Decree-Law No. 1437 (1975). Decree-Law No. 77065 (1976).
- ³⁸Decree-Law No. 1435 (1975).
- ³⁹Decree-Law No. 1424 (1975). *Portaria* No. 429 (1975).
- ⁴⁰*Portaria* No. 438 (1975).
- ⁴¹Law No. 6260 (1975).
- ⁴²Law No. 6226 (1975). Regulations, Decree No. 76326 (1975).
- ⁴³Decree No. 76186 (1975).
- ⁴⁴Legislative Decrees No. 92 and 93 both (1975) and No. 95 (1975).
- ⁴⁵Legislative Decree No. 62 (1975).
- ⁴⁶Decree-Law No. 1244 (1975).

- ⁴⁷Decree-Law No. 1080 (1975).
- ⁴⁸Decree-Law No. 1276 (1975).
- ⁴⁹Decree-Law No. 1024 (1975).
- ⁵⁰Decree No. 1261 (1975). Decree No. 1351 (1970).
- ⁵¹Circular No. 103 (1975).
- ⁵²Decree-Law No. 1089 (1975).
- ⁵³Decree-Law No. 1226 (1975).
- ⁵⁴Decree-Law No. 1244 (1975).
- ⁵⁵Decree No. 719 (1975).
- ⁵⁶Decree-Law No. 1122 (1975).
- ⁵⁷Decree-Law No. 1088 (1975).
- ⁵⁸Law No. 1100 (1975).
- ⁵⁹Decree-Law No. 1239 (1975).
- ⁶⁰Decree-Law No. 1298 (1975).
- ⁶¹Decree-Law No. 1185 (1975).
- ⁶²Decree-Law No. 1121 (1975).
- ⁶³Decree-Law No. 1233 (1975).
- ⁶⁴Decree No. 1384 (1975).
- ⁶⁵Decree No. 918 (1975).
- ⁶⁶Decree-Law No. 1225 (1975).
- ⁶⁷Decree-Law No. 1123 (1975).
- ⁶⁸Decree-Law No. 1244 (1975).
- ⁶⁹Resolution of October 15, 1975 as amended by Resolution of October 22, 1975.
- ⁷⁰Decision of August 21, 1975.
- ⁷¹Decree No. 1226 (1975).
- ⁷²Decree No. 1227 (1975).
- ⁷³Decree No. 1604 (1975).
- ⁷⁴Law No. 49 (1975).
- ⁷⁵Decree No. 2799 (1975).
- ⁷⁶Law No. 5792 (1975).
- ⁷⁷Decree No. 4966-H (1975).
- ⁷⁸Executive Decree No. 5359-H (1975).
- ⁷⁹Decree No. 5443-H (1975).
- ⁸⁰Decree No. 5527-H (1975).
- ⁸¹Decree No. 5126-H (1975).

- ⁸²Decree No. 5287-H (1975).
- ⁸³Law No. 5812 (1975).
- ⁸⁴Law No. 5788 (1975).
- ⁸⁵Law No. 5844 (1975).
- ⁸⁶Bill No. 7400 (1975).
- ⁸⁷Law No. 13 (1974) and Decree No. 303 (1974).
- ⁸⁸Law No. 115 (1975).
- ⁸⁹Law No. 138 (1975).
- ⁹⁰Law No. 116 (1975).
- ⁹¹Law No. 109 (1974).
- ⁹²Decree No. 738 (1975).
- ⁹³Decree No. 786 (1975).
- ⁹⁴Decree No. 824 (1975).
- ⁹⁵Decree No. 924-D (1975).
- ⁹⁶Decree No. 982 (1975).
- ⁹⁷Decree No. 570 (1975).
- ⁹⁸Decree No. 569 (1975).
- ⁹⁹Decree No. 541-A (1975).
- ¹⁰⁰Decree No. 733 (1975).
- ¹⁰¹Decree No. 734 (1975).
- ¹⁰²Decree No. 924 I (1975).
- ¹⁰³Decree No. 852 (1975).
- ¹⁰⁴Decree No. 789 (1975).
- ¹⁰⁵Decree No. 1016-A (1975).
- ¹⁰⁶Resolution No. 849 (1975).
- ¹⁰⁷Resolution No. 850 (1975).
- ¹⁰⁸Resolution No. 1012 (1975).
- ¹⁰⁹Decree No. 416 (1975).
- ¹¹⁰Decree No. 343 (1975).
- ¹¹¹Legislative Decree No. 412 (1975).
- ¹¹²Legislative Decree No. 327 (1975).
- ¹¹³Executive Order (1975).
- ¹¹⁴Legislative Decree No. 69-75 (1975).
- ¹¹⁵Legislative Decree No. 55-75 (1975).
- ¹¹⁶Legislative Decree No. 83-75 (1975).

- ¹¹⁷Executive Order No. 22-75 (1975).
- ¹¹⁸Order No. 2019 (1975).
- ¹¹⁹Legislative Decree No. 47-75 (1975).
- ¹²⁰Executive Order of July 3, 1975.
- ¹²¹Decree No. 287 (1975).
- ¹²²Decree No. 287 (1975).
- ¹²³Executive Order No. 259 (1975).
- ¹²⁴Executive Order No. 492 (1975).
- ¹²⁵Tax Reform Law of December 26, 1975.
- ¹²⁶Executive Orders of August 26, 1975.
- ¹²⁷Executive Decree of December 12, 1975.
- ¹²⁸Tax Reform Law of December 26, 1975.
- ¹²⁹Executive Order of August 26, 1975.
- ¹³⁰Executive Order of August 26, 1975.
- ¹³¹Legislative Decree of December 11, 1975.
- ¹³²Executive Order of August 26, 1975.
- ¹³³Executive Order of June 15, 1975.
- ¹³⁴Order of August 1, 1975.
- ¹³⁵Executive Order of August 26, 1975.
- ¹³⁶Executive Decree of July 7, 1975.
- ¹³⁷Legislative Decree of December 19, 1975.
- ¹³⁸Legislative Decree No. 44 (1975).
- ¹³⁹Executive Decree No. 30 (1975).
- ¹⁴⁰Executive Decree No. 32 (1975).
- ¹⁴¹Executive Decree No. 39 (1975).
- ¹⁴²Executive Decree No. 43 (1975).
- ¹⁴³Decree No. 32 (1975).
- ¹⁴⁴Law No. 59 (1975).
- ¹⁴⁵Law No. 57 (1975).
- ¹⁴⁶Law No. 67 (1975).
- ¹⁴⁷Law No. 48 (1975).
- ¹⁴⁸Law No. 64 (1975).
- ¹⁴⁹Law No. 54 (1975).
- ¹⁵⁰Executive Decree No. 85 (1975).
- ¹⁵¹Law No. 66 (1975).

- ¹⁵²Decree No. 17887 (1975).
- ¹⁵³Decree No. 18182 (1975).
- ¹⁵⁴Decree No. 18991 (1975).
- ¹⁵⁵Decree No. 16474 (1975).
- ¹⁵⁶Resolution G No. 8 (1975).
- ¹⁵⁷Law No. 538 (1975).
- ¹⁵⁸Release (Organización Labor Bulletin No. 43/75).
- ¹⁵⁹Resolution No. 23 (1975).
- ¹⁶⁰Tax Court Resolution No. 10380 (1975).
- ¹⁶¹Decree-Law No. 21306 (1975).
- ¹⁶²Supreme Decree No. 306-75-EF (1975).
- ¹⁶³Decree-Laws No. 21259 and No. 21260 (1975).
- ¹⁶⁴Decree-Law No. 21242 (1975).
- ¹⁶⁵Decree-Law No. 21298 (1975).
- ¹⁶⁶Decree-Law No. 21297 (1975).
- ¹⁶⁷Ministerial Resolution No. 870-75 IT/DS (1975).
- ¹⁶⁸Decree-Law No. 21311 (1975).
- ¹⁶⁹Decree-Law No. 21241 (1975).
- ¹⁷⁰Supreme Decree No. 309-75-EF (1975).
- ¹⁷¹Release, September 27, 1975.
- ¹⁷²Law No. 14416 (1975).
- ¹⁷³Law No. 14416, *supra* note 172.
- ¹⁷⁴Decree No. 505 (1975).
- ¹⁷⁵Law No. 14416, *supra* note 172.
- ¹⁷⁶Decree No. 966 (1975).
- ¹⁷⁷Decree No. 923 (1975).
- ¹⁷⁸Decree No. 776 (1975).
- ¹⁷⁹Decree No. 859 (1975).
- ¹⁸⁰Law No. 14474 (1975).
- ¹⁸¹Law No. 14411 (1975).
- ¹⁸²Decree No. 951 (1975).
- ¹⁸³Law No. 14416, *supra* note 172.
- ¹⁸⁴Decree No. 967 (1975).
- ¹⁸⁵Decree No. 1130 (1975) and Joint Resolution No. 541 (1975).
- ¹⁸⁶Joint Resolution 655 (1975).

¹⁸⁷Decree No. 1256 (1975).

¹⁸⁸Joint Resolution No. 461 (1975).

¹⁸⁹Decree No. 952 (1975) amending Decree No. 338 (1974), as amended by Decree No. 484 (1974).

¹⁹⁰Decree No. 1213 (1975).

¹⁹¹Decree No. 1001 (1975).

¹⁹²Decree No. 1334 (1975).

¹⁹³Decree No. 991 (1975).

¹⁹⁴Decree No. 1074 (1975).

¹⁹⁵Decree No. 1225 (1975).

¹⁹⁶Law of August 21, 1975.

¹⁹⁷Law of August 29, 1975.